SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 474

IRWIN GORDON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit is not reported. It is printed in Appendix A hereto, infra, at page App. 1.

JURISDICTION

The opinion of the United States Court of Appeals for the Second Circuit was made and entered on July 5,

1967. A copy is annexed to this petition in Appendix A. The jurisdiction of the Court is invoked under 28 U.S.C.A., §1254(1).

QUESTION PRESENTED

Where several Counts of a Grand Jury Indictment charge the petitioner pursuant to 18 U.S.C.A., §152, with the same offense of concealing various types of property subsequent to a given date, are such counts defective and subject to dismissal.

STATEMENT

Petitioner, IRWIN GORDON, was charged under an eight-count Indictment in violation of 18 U.S.C.C. §152 (Appendix C).

Petitioner challenged the sufficiency of the Indictment and requested a bill of particulars. Although Respondent agreed to provide better particulars, Respondent did not comply with its agreement. Thereupon, Petitioner moved for dismissal of the Indictment due to non-compliance of the Government with its aforesaid agreement. On October 26, 1965, the trial Judge entered an Order denying Petitioner's motion to dismiss.

Petitioner entered a plea of not guilty and demanded jury trial. The jury found Petitioner guilty of all counts. He was sentenced to a concurrent term of three years by the Honorable M. Joseph Blumenfeld, Judge of the United States District Court at Hartford, Connecticut.

Timely appeal was filed in the United States Court of Appeals for the Second Circuit. The following were the questions presented for the Court's consideration:

1) WHETHER COUNTS I, III, IV, VI AND VIII OF THE INDICTMENT ARE DEFECTIVE IN THAT EACH COUNT CHARGES THE APPELLANT WITH THE SAME OFFENSE OF CONCEALING VARIOUS TYPES OF PROPERTY UNDER TITLE 18, U.S.C.A. §152.

2) WHETHER AN INDICTMENT FOR CONSPIRACY MUST CONTAIN A STATEMENT OF THE FACTS RELIED ON IN CONCISE LANGUAGE WITH AS MUCH CERTAINTY AS THE NATURE OF THE CASE WILL PERMIT.

3) WHETHER COUNTS III AND VII OF THE INDICTMENT ARE DEFECTIVE IN THAT THEY DO NOT IN ANY WAY SET FORTH THE METHOD OF CONCEALMENT OR HOW IT WAS ACCOMPLISHED.

4) WHETHER COUNT III AND VI OF THE INDICTMENT ARE DEFECTIVE IN THAT NO CRIME IS CHARGED.

On these points of law, the United States Court of Appeals for the Second Circuit held that there was no error or accumulation of errors committed which would warrant a reversal (Appendix A).

ARGUMENT AND REASONS FOR GRANTING THE WRIT

The decision below should be reviewed because it involves a direct conflict with a decision of the Court of Appeals in the Ninth Circuit, viz., *Edwards v. United States*, 265 F.2d 302 (9th Cir. 1959).

In its opinion (Appendix A), the United States Court of Appeals for the Second Circuit attempted to distinguish *Edwards*, supra, by holding that "it was not a case where each transfer of money into the bank was treated as a separate offense." In *Edwards*, supra, appellant was found guilty of Count 19 which charged the transferring of a cash register in contemplation of bankruptcy. He was also found guilty of Counts 3, 6, 9, 12, 15, 18 and 20 which charged the concealment of various sums of money on or after May 7, 1953. His sentence on these seven counts was to run concurrently with his sentence on Count 19. The Court found that the eight charges constituted one offense against the appellants and the gist of the offense charged in each of the eight counts against each appellant was the failure of each to reveal or disclose on or after May 7, 1953 property belonging to the bankrupt. The Court at pg. 306 stated:

> ". . . The fact that several different items of property belonging to the estate of a bankrupt were concealed does not multiply the number of offenses even though the concealment of any one of the items standing alone would constitute the offense denounced by the statute."

In the case sub judice, Counts I, III, IV and VII should constitute a single count of the indictment. The four counts allege that between January 1, 1963 and May 1, 1968, Petitioner concealed various articles of personal property. These concealments, although involving different articles of personalty, involve a single continuous transaction, which occurred prior to the filing of the petition in bankruptcy. Since these acts were singular in purpose and occurred prior to the filing of the petition, the rationale of the *Edwards* case, supra, is directly on point.

The offense made punishable under 18 U.S.C.A. §152 is a course of conduct. A reading of the Statute compendiously treats as one offense all violations that arise from that conduct.

The Second Circuit Court of Appeals summarily dismissed appellant's contention upon rationale not in account with reality. The opinion states that since the sentences on each count run concurrently, the only errors which need be considered are those relating to the entire trial and to Count VII, the principal accusation.

The rationale holds the punishment to be the cardinal consideration upon appeal — not the jurisdictional requirement of Counts which are legally sufficient.

Appellant, and all others who are held to answer to a multiple-count indictment, are entitled to have each Count tested for sufficiency. It is a substantive right. Its denial is a substantive wrong.

Appellant stands convicted of eight felonies. These

convictions will follow him for his entire life, even to the traffic courts. A Judge needs no advocate to say he will be more severe on an eight-time felony loser than on a one-time loser.

Where insufficient Counts are allowed to pass on the single-sentence theory (twice asserted in the opinion of the Second Circuit Court), even the inexperienced Jurist appreciates the prejudice to appellant. The cumulative impact upon the Jury is over-powering. The problem of defense is rendered more complex and, the assistance of counsel less effective.

Whether one holds the Congressional law or the Natural law to be Absolute, the *Edwards* case, supra, is more in accord with both systems of law than the opinion appealed from, or the cases cited therein.

Edwards, supra, inherently holds that for a given course of conduct, an accused must be punished. The cases which hold contra to *Edwards*, supra, inherently hold that the prosecution shall make certain the accused is punished. *Edwards*, supra, is in accord with the Christian influence which pervades our laws. The said other authorities are not.

Edwards, supra, stands for the proposition that for one wrong there should be one punishment. Contrary authorities stand for the proposition that Judicial labor shall be saved.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit was served this 3rd day of August, 1967 upon the following persons by depositing a copy of same addressed to each in the United States Mail with sufficient Air Mail Postage Prepaid:

HONORABLE THURGOOD MARSHALL
Solicitor General
United States Department of Justice
Washington, D. C. 20530
and to
HONORABLE JON NEWMAN
Assistant United States Attorney
United States Department of Justice
460 Main Street
Hartford, Connecticut

IRWIN GORDON, In Pro Se

APPENDIX

In The

SUPREME COURT OF THE UNITED STATES

_____Term, 1967

NO.

IRWIN GORDON,

Petitioner,

-vs-

UNITED STATES OF AMERICA,

Respondent.

Appendix To Petition For A Writ of Certiorari To The United States Court of Appeals For The Second Circuit

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APPENDIX A

OPINION OF SECOND CIRCUIT COURT OF APPEALS

UNITED STATES COURT OF APPEALS
For the Second Circuit

No. 481 — September Term, 1966.
(Argued June 7, 1967 Decided July 5, 1967)
Docket No. 31128

UNITED STATES OF AMERICA,
Appellee,

-vs-

IRWIN GORDON and JOSEPH SCATA,
Appellants.

Before:

MOORE, FRIENDLY AND ANDERSON,
Circuit Judges.

Appeal from a judgment of conviction by the United States District Court for the District of Connecticut of bankruptcy fraud in violation of 18 U.S.C. Section 152 after a trial before M. Joseph Blumenfeld, Judge, and a jury. The appellants Irwin Gordon and Joseph J. Scata attack the sufficiency of the evidence and the form of the indictment.

Affirmed.

IRWIN GORDON, per se

W. PAUL FLYNN, New Haven, Connecticut (Joel N. Lee, Miami Beach, Florida, Kopkind & Flynn, New Haven, Connecticut, on the brief), for the appellant Scata

JON O. NEWMAN, United States Attorney for the District of Connecticut, Hartford, Connecticut, for the appellee.

MOORE, Circuit Judge:

Irwin Gordon and Joseph J. Scata appeal from judgments of conviction for bankruptcy fraud in violation of 18 U.S.C. Section 152 after a trial before a jury. Both appellants attack the form of the indictment and Scata additionally attacks the venue and the sufficiency of the evidence of guilt. We affirm.

The evidence tended to show that Gordon and Scata were, respectively, the president and secretary of a Connecticut corporation which operated retail discount stores in that state including one at Rocky Hill. The Rocky Hill store was opened in September of 1962 and closed in May of the following year. The Connecticut corporation was adjudicated a bankrupt in June and it is in connection with this bankruptcy that fraud is alleged. In January of 1963, the appellants opened another store of a similar nature in Newburgh, New York, which was owned by a separate New York corporation. Beginning at once and continuing with increasing frequency until the closing of

the Rocky Hill store, substantial amounts of merchandise were transferred from Connecticut to New York. In addition, cash arising from the operation of the Connecticut store was transferred to a bank account opened in Newburgh for the use of the Newburgh store. The Trustee in bankruptcy was never told of the bank account.

At the trial, the prosecution offered the expert testimony of two accountants to show the extent of the misappropriation of merchandise. Both testified that the value of merchandise purchased as represented by vouchers less the value of the goods sold as represented by the proceeds appearing in bank statements less the value of goods on hand at the time of bankruptcy left an unexplained absence of over $50,000 worth of merchandise. In this analysis, appellants were given credit for some $24,000 worth of goods which had been shipped to New York but had been paid for by that store.

The evidence also showed that fictitious invoices were prepared to cover a part of the missing inventory but that there were no bank deposits to indicate that payment had been made for the goods covered by these invoices. And under the direction of the appellants, inflated insurance claims were prepared following a minor robbery. In addition, there was a substantial amount of evidence of fraudulent intent which need not be detailed here.

Appellants each raise a number of errors alleged to have been committed below. We have examined each and find that no error or accumulation of errors was committed that would warrant a reversal. Indeed, most of the claims are so lacking in merit that discussion would serve no use-

ful purpose. In any event, since the sentences one each count run concurrently, the only errors which we need consider are those relating to the entire trial and to Count VII, the principal accusation. *Hirabayashi v. United States*, 320 U. S. 81 (1943).

A. THE INDICTMENT

Both appellants were charged in a single, eight-count indictment. No question is raised concerning Counts II and V and they will not be considered further. Counts I and IV charged violations of Section 152, paragraph 1, which relates to concealing assets of the bankrupt's estate from the Trustee. Count IV covered the bank account and Count I covered a truck which belonged to the Rocky Hill store but was removed to New York.

Count III and VI charge violations of Section 152, paragraph 6, which prohibits transferring assets in contemplation of bankruptcy or with an intent to defeat the bankruptcy laws, again by concealing the truck and the bank account.

Count VII charged a violation of paragraph 6 through the transfer of the merchandise and this was the heart of the indictment.

Count VIII charged a conspiracy to violate Section 152, paragraphs 1, 2 and 6, by committing the substantive crimes previously charged and enumerated a variety of overt acts.

Both appellants claim that the failure to consolidate some or all of these counts was reversible error. This argu-

ment has no merit. It is beyond dispute that the separate paragraphs of Section 152 create separate crimes, the violation of which may be indicted separately. See, e.g., *United States v. Schireson*, 116 F.2d 881 (3 Cir. 1940). And it has been held that separate transfers in violation of paragraph 6 constitute separate offenses. *Dranow v. United States*, 307 F.2d 545 (8 Cir. 1962), *United States v. Shapiro*, 101 F.2d 375 (7 Cir. 1939). The only possible error, therefore, was the failure to consolidate Counts I and IV but we are unable to find the slightest prejudice to appellants. This was not a case where each transfer of money into the bank account was treated as a separate offense. See *Edwards v. United States*, 265 F.2d 302 (9 Cir. 1959). And since the sentences of each appellant on each count are to run concurrently, they cannot complain of a failure to consolidate two of the more minor counts of an eight-count indictment.

In any event, appellants have waived their rights to have this question considered on appeal. A pre-trial motion to consolidate was denied on the ground that the resolution of such a motion should be deferred until trial. The motion, however, was not renewed at trial and the appellants proceeded without further objection to this aspect of the indictment.

B. SUFFICIENCY OF THE EVIDENCE.

Appellant Scata asserts that the evidence relating to Count VII, the transferred merchandise, was insufficient in several respects. First, he argues that the government's case was fatally defective because of the inadvertent failure to introduce into evidence the records of the Rocky

Hill store which formed the basis of the expert testimony. As it is not disputed that these records were in court and available to the defense, the most this argument suggests is a formal violation of the best evidence rule. Certainly, if these records had been destroyed, the experts could have testified to their contents. *Corbett v. United States*, 238 F.2d 557 (9 Cir. 1956). Because these records were available to the defense for use in cross-examination or otherwise, appellants cannot demonstrate any possible prejudice requiring reversal.

Second, appellant contends that because it does not appear that all of the corporate records were before the experts, their testimony was incompetent. There is no suggestion that the government suppressed evidence and, in fact, it does not appear to be disputed that the principal reason for the absence of some records was that the appellants failed to produce them in accordance with the Trustee's demand. Nor do we understand the appellants to claim that the absence of some records was necessarily prejudicial to them for they do not contest the assertion of the government that the missing records would be more damning than redeeming to the appellants. We are of the opinion that argumentation concerning any lapses in the government's case and explanations for those lapses, if any, properly would be directed to the jury. It is clear beyond doubt that the government presented adequate evidence of misappropriation of merchandise to go to the jury.

C. VENUE

Scata's attack on the venue is without merit but should be noted. Essentially he argues that the concealment, if

any, occurred in New York. But the crime charged is concealment from the Trustee and the situs of the Trustee is Connecticut. It can scarcely be argued that Scata had no duty to disclose to the Trustee a prior concealment in another state. See, e.g., *United States v. Zimmerman*, 159 F.2d 559 (7 Cir. 1946). The proper venue, therefore, is Connecticut. See also 18 U.S.C. Section 3237.

Affirmed.

APPENDIX B

STATUTORY PROVISION INVOLVED TITLE 18, UNITED STATES CODE, SECTION 152.

"Whoever knowingly and fraudulently conceals from the receiver, custodian, trustee, marshall, or other officer of the court charged with the control or custody of property or from creditors in any bankruptcy proceeding, any property belonging to the estate of a bankrupt; or

Whoever knowingly and fraudulently makes a false oath or account in or in relation to any bankruptcy proceeding; or

Whoever knowingly and fraudulently presents any false claim for proof against the estate of a bankrupt, or uses any such claim in any bankruptcy proceeding, personally, or by agent, proxy, or attorney, or as agent, proxy or attorney, or

Whoever knowingly and fraudulently receives any material amount of property from a bankrupt after the

filing of a bankruptcy proceeding, with intent to defeat the bankruptcy law or

Whoever knowingly and fraudulently gives, offers, receives or attempts to obtain any money or property, remuneration, compensation, reward, advantage or promise thereof, for acting or forbearing to act in any bankruptcy proceeding; or

Whoever either individually or as an agent or officer of any person or corporation, in contemplation of a bankruptcy proceeding by or against him or any other person or corporation, or with intent to defeat the bankruptcy law, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation, or

Whoever after the filing of a bankruptcy proceeding or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies or makes a false entry in any document affecting or relating to the property of affairs of a bankrupt; or

Whoever after the filing of a bankruptcy proceeding, knowingly and fraudulently withholds from the receiver, custodian, trustee, marshall or other officer of the court entitled to its possession, any document affecting or relating to the property or affairs of a bankrupt.

Shall be fined not more than $5,000 or imprisoned not more than five years, or both. As amended June 12, 1960, Feb. L. 86-519, S. 2, 74 Stat. 217; Sept. 2, 1960, pub. L. 86-701, 74 Stat. 753.

APPENDIX C

No. 11184 CRIMINAL

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
UNITED STATES OF AMERICA
v.
IRWIN GORDON, NUNZIO SCATA and JOSEPH SCATA

INDICTMENT

The Grand Jury charges:

COUNT ONE

1. On the 8th day of May, 1963, an involuntary petition in bankruptcy was filed in the United States District Court for the District of Connecticut praying that National Furniture & Appliance Stores, Inc., a corporation organized and existing under the laws of the State of Connecticut, with its place of business at 2128 Silas Deane Highway, Rocky Hill, Connecticut, be adjudicated a bankrupt and in pursuance of said petition, the said National Furniture and Appliance Stores, Inc., was, on the 4th day of June, 1963, adjudicated a bankrupt.

2. On the 8th day of May, 1963, the said bankruptcy proceedings was referred to Saul Seidman, the referee in bankruptcy of the aforesaid court, for the further proceedings in accordance with the bankruptcy laws.

3. Therefore, on the 15th day of May, 1963, Sidney Waingrow was appointed Receiver in the aforesaid proceedings and on the 3rd day of July, 1963, Abraham A. Katz was appointed Trustee of the estate of the said bankrupt.

4. During all of the times hereinafter mentioned, IRWIN GORDON, a defendant herein, was the President of the said bankrupt; NUNZIO SCATA, a defendant herein, was the Secretary-Treasurer of the said bankrupt.

5. At the time of the adjudication of the said National Furniture & Appliance Stores, Inc. as a bankrupt, and continuously thereafter until the date upon which the property was discovered, only a part of the assets have been made available to the officers of the Court, appointed as aforesaid, and to creditors of the said bankrupt, whereas preceding the filing of the said bankruptcy petition, the said bankrupt had substantial property, including, among other things, a 1954 Ford van-type truck, green with a deep blue body with "Lombardi's" painted on the side.

6. On or about the 1st day of May, 1963, the exact date being unknown to the Grand Jurors, and continuously thereafter until the date upon which the property was discovered, in the District of Connecticut, the said National Furniture & Appliance Stores, Inc., a corporation, and IRWIN GORDON, NUNZIO SCATA AND JOSEPH SCATA knowingly and fraudulently did conceal from Sidney Waingrow and Abraham A. Katz, receiver and Trustee respectively, as aforesaid, and from creditors in the said proceedings, property belonging to the estate

of the said bankrupt, consisting of a 1954 Ford van-type truck, green with deep blue body with "Lombardi's" painted on the sides, in that the defendants did during the period aforesaid remove from the foresaid premises of the bankrupt, the said property and did deliver the same to National Discount Stores at 303 Broadway, Newburgh, New York, for the purpose and with the intent of concealing such property.

All in violation of Title 18, United States Code, Section 152.

COUNT TWO

1. The Grand Jury realleges all the allegations of Paragraph 1 to 4, inclusive, of Count One of this indictment.

2. On or about the 7th day of August, 1963, in the District of Connecticut, IRWIN GORDON, knowingly and fraudulently did make a false oath, as to a material matter, and account in, and in relation to, the aforesaid proceeding, in that he filed in the Office of the Clerk of the United States District Court for the District aforesaid, schedules of debts and assets of the said bankrupt, subscribed and sworn to by said IRWIN GORDON, wherein he did make solemn oath that the answers contained therein were true and complete to the best of his knowledge, information and belief, but wherein he did knowingly and fraudulently fail to disclose that among the assets of the said bankrupt was a 1954 Ford van-type truck, green with a deep blue body with "Lombardi's" painted on the sides.

All in violation of Title 18, United States Code, Section 152.

COUNT THREE

1. The Grand Jury realleges all of the allegations of Paragraphs 1 to 5, inclusive, of Count One of the Indictment.

2. On or about the 1st day of March, 1963, the exact date being unknown to the Grand Jurors, in the District of Connecticut, IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA, as officers of the National Furniture & Appliance Stores, Inc., the bankrupt, and in contemplation of a bankruptcy proceedings by and against the National Furniture & Appliance Stores, Inc., and with intent to defeat the bankruptcy laws, knowingly and fraudulently did transfer, and conceal property of the said National Furniture & Appliance Stores, Inc., that is, a 1954 Ford van-type truck, green with a deep blue body with "Lombardi's" painted on the sides.

All in violation of Title 18, United States Code, Section 152.

COUNT FOUR

1. The Grand Jury realleges all of the allegations of Paragraphs 1 to 4, inclusive, of Count One of this Indictment.

2. At the time of the adjudication of the said National Furniture & Appliance Stores, Inc., as a bankrupt,

and continuously thereafter until the date upon which the property was discovered, only a part of the assets have been made available to the officers of the Court, appointed as aforesaid, and to creditors of the said bankrupt, whereas preceding the filing of the said bankruptcy petition, the said bankrupt had substantial property, including, among other things, a bank account in the County National Bank of Newburgh, New York.

3. On or about the 28th day of January, 1963, and continuously thereafter until the date upon which the property was discovered, in the District of Connecticut, the said National Furniture & Appliance Stores, Inc., a corporation, and IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA knowingly and fraudulently did conceal from Sidney Waingrow and Abraham A. Katz, Receiver and Trustee, respectively, as aforesaid, and from creditors in the said proceeding, property belonging to the estate of the said bankrupt, consisting of a bank account in the County National Bank of Newburgh, New York, in that the defendants did during the period aforesaid remove money from the aforesaid premises of the bankrupt, and placed it in the bank account in the County National Bank of Newburgh, New York, for the purposes and with the intent to conceal such property.

All in violation of Title 18, United States Code, Section 152.

COUNT FIVE

1. The Grand Jury realleges all of the allegations of Paragraph 1 to 4, inclusive of Count One of the Indictment.

2. On or about the 7th day of August, 1963, in the District of Connecticut, IRWIN GORDON knowingly and fraudulently did make a false oath, as to a material matter, and account in, and in relation to, the aforesaid bankruptcy proceedings, in that he filed in the Office of the Clerk of the United States District Court for the District aforesaid, schedules of debts and assets of the said bankrupt, subscribed and sworn to by the said IRWIN GORDON, wherein he did make solemn oath that the said answers contained therein were true and complete to the best of his knowledge, information and belief, but wherein he did knowingly and fraudulently fail to disclose that among the assets of said bankrupt was a bank account in the County National Bank of Newburgh, New York.

All in violation of Title 18, United States Code, Section 152.

COUNT SIX

1. The Grand Jury realleges all the allegations of Paragraph 1 to 4, inclusive, of Count One of this indictment.

2. The Grand Jury realleges all the allegations of Paragraph 2 of Count Four of this Indictment.

3. On or about the 28th day of January, 1963, in the District of Connecticut, IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA as officers of the National Furniture & Appliance Stores, Inc., the bankrupt, and in contemplation of a bankruptcy proceedings by and against the said National Furniture & Appliance Stores,

Inc., and with intent to defeat the bankruptcy laws, knowingly and fraudulently did transfer and conceal property of the said National Furniture & Appliance Stores, Inc., that is, they opened a bank account in the County National Bank of Newburgh, New York, and kept funds of the bankrupt corporation therein.

All in violation of Title 18, United States Code, Section 152.

COUNT SEVEN

1. The Grand Jury realleges all the allegations of Paragraphs 1 to 4, inclusive, of Count One of this indictment.

2. At the time of the adjudication of the said National Furniture & Appliance Stores, Inc., a bankrupt, and continuously thereafter only a part of the assets have been made available to the officers of the Court, appointed as aforesaid, and to creditors of the said bankrupt, whereas preceding the filing of the said bankruptcy petition, the said bankrupt had substantial property, including, among other things, furniture, television and stereo sets, and General Electric heavy electric appliances.

3. From approximately February 1, 1963, until the date of the adjudication of the said National Furniture & Appliance Stores, Inc., as a bankrupt, in the District of Connecticut, IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA, as officers of the National Furniture & Appliance Stores, Inc., the bankrupt, and in contemplation of a bankruptcy proceedings by and against the said

National Furniture & Appliance Stores, Inc., and with intent to defeat the bankruptcy laws, knowingly and fraudulently did transfer and conceal property of the said National Furniture & Appliance Stores, Inc., that is, items including, among other things, furniture, television and stereo sets, and General Electric heavy electric appliances, the total approximately value of which was between $25,000 and $95,000.

All in violation of Title 18, United States Code, Section 152.

COUNT EIGHT

1. The Grand Jury realleges all the allegations of Paragraph 1 to 4, inclusive, of Count One of the Indictment.

2. Between January 1, 1963 and the date of the adjudication of the said National Furniture & Appliance Stores, Inc., as a bankrupt in the District of Connecticut, IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA as officers of the National Furniture & Appliance Stores, Inc., the bankrupt and the defendants herein, and Paul Scata, Isadore (Sonny) Brickman and Yan Slade, as named herein as co-conspirators but not as defendants, and diverse other persons to the Grand Jury unknown, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Title 18, United States Code, Section 152.

3. It was a part of the said conspiracy that the defendants knowingly and fraudulently concealed from

the Receiver and Trustee as aforesaid, and from creditors in the said proceedings, property belonging to the estate of the said bankrupt.

4. It was further a part of the said conspiracy that the defendants knowingly and fraudulently made a false oath as to material matters and accounts in and in relation to the aforesaid bankruptcy proceedings.

5. It was further a part of the said conspiracy that the defendants and co-conspirators as agents and officers of the National Furniture & Appliance Stores, Inc., the bankrupt, and in contemplation of a bankruptcy proceeding by and against the said National Furniture & Appliance Stores, Inc., and with intent to defeat the bankruptcy laws, knowingly and fraudulently did transfer and conceal property of the said National Furniture & Appliance Stores, Inc.

OVERT ACTS

At the time hereinafter mentioned, the defendants committed the following overt acts in furtherance of said conspiracy and to effect the objects thereof:

1. On or about January 28, 1963, a checking account was opened in the name of National Furniture & Appliance Stores, Inc., in the County National Bank in Newburgh, New York, by the defendant, NUNZIO SCATA and JOSEPH J. SCATA.

2. In February, 1963, a check was drawn on the National Furniture & Appliance Stores, Inc., account in

the County National Bank in Newburgh, New York, in the amount of $400 payable to the defendants, NUNZIO SCATA and JOSEPH J. SCATA.

3. In February, 1963, a check was drawn on the National Furniture & Appliance Stores, Inc., account in the County National Bank in Newburgh, New York, in the amount of $900 payable to Sonny Brickman.

4. In February, 1963, a check was drawn on the National Furniture & Appliance Stores, Inc., account in the County National Bank in Newburgh, New York, in the sum of $215 payable to Sonny Brickman.

5. In February, 1963, a check was drawn on the National Furniture & Appliance Stores, Inc., account in the County National Bank in Newburgh, New York, in the sum of $1,500 payable to cash.

6. In March, 1963, a check was drawn on the National Furniture & Appliance Stores, Inc., account in the County National Bank in Newburgh, New York, in the amount of $2,500.00 payable to National Discount Stores.

7. In March, 1963, a check was drawn on the National Furniture & Appliance Stores, Inc., account in the County National Bank in Newburgh, New York, in the amount of $1,000 payable to George Hyman, Attorney for Blue Bell Manufacturing Company.

8. In April, 1963, a check was drawn on the National Furniture & Appliance Stores, Inc., account in the

County National Bank in Newburgh, New York, in the amount of $500 payable to George Hyman, Attorney for Blue Bell Manufacturing Company.

9. On or about May 16, 1963, a check was drawn on the National Furniture & Appliance Stores, Inc., account in the County National Bank in Newburgh, New York, in the amount of $464.51 payable to cash and signed by the defendants NUNZIO SCATA and JOSEPH J. SCATA.

10. On or about February 25, 1963, IRWIN GORDON as President, NUNZIO SCATA as Vice President, and JOSEPH J. SCATA, as Secretary Treasurer, formed the National Discount Stores, a corporation organized to do business at 303 Broadway, Newburgh, New York.

11. Sometime in February, 1963, the exact date unknown to the Grand Jury, General Electric Distribution and Sales Operations, represented in Connecticut by Louis Comenk, Supervisor of Sales and Distribution and Ray Winialski, Salesman, sold to the National Furniture & Appliance Stores, Inc., a railroad carload of large electrical appliances, which goods were delivered by General Electric via rail to the public railhead at Wethersfield, Connecticut. Paul Scata, acting as an employee of the National Furniture & Appliance Stores, Inc., and under orders from IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA, drove a tractor-trailer load of these appliances direct from the railroad siding in Wethersfield, Connecticut, to the National Discount Stores in Newburgh, New York.

12. On numerous occasions between December, 1962, and April, 1963, the exact dates of which are unknown to

the Grand Jurors, Paul Scata, an employee of the National Furniture & Appliance Stores, Inc., transported truck loads of goods and merchandise from the bankrupt store in Rocky Hill to the National Discount Stores in Newburgh, New York. Goods transported included television and stereo sets, furniture and linoleum. Until late February or early March, he most often drove a 1954 Ford van-type truck with "Lombardi's" painted on its sides.

13. In late February or early March, the exact date being unknown to the Grand Jurors, Paul Scata, an employee of the National Furniture & Appliance Stores, Inc., drove a truck load of goods and merchandise from the bankrupt store in Rocky Hill, Connecticut, to the National Discount Store in Newburgh, New York, in a 1954 Ford van-type truck with "Lombardi's" painted on its sides, under instructions, Paul Scata left the 1954 Ford van-type truck at the National Discount Store at Newburgh, New York, and returned to Connecticut by other means.

14. In late April, 1963, or early May, 1963, the exact dates being unknown to the Grand Jurors, Van Slade who had been the manager of the National Furniture & Appliance Stores, Inc., until April 1963 and was thereafter employed by the National Discount Stores in Newburgh, New York, was instructed by IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA and in fact did prepare fictitious invoices, showing that the value of the goods and merchandise shipped from the National Furniture & Appliance Stores, Inc., in Rocky Hill, Connecticut to National Discount Stores in Newburgh, New York, amount to approximately $47,000.

15. On numerous occasions between December, 1962 and April, 1963, the exact dates of which are unknown to the Grand Jurors, Van Slade, the manager of the National Furniture & Appliance Stores, Inc., under contract from IRWIN GORDON, NUNZIO SCATA and JOSEPH J. SCATA, prepared and ordered shipment of goods and merchandise from the National Furniture & Appliance Stores, Inc., in Rocky Hill, Connecticut, to the National Discount Stores in Newburgh, New York, goods and merchandise shipped included furniture, appliances and tires.

17. On or about March 12, 1963, the Detri-Kind Camera, Incorporated, of New York City, sold various items to the National Furniture & Appliance Stores, Inc., with the billing made to the bankrupt company but delivery to the National Discount Stores of Newburgh, Incorporated, Newburgh, New York.

18. On or about March 15, 1963, Enterprise Aluminum Company, of Masillon, Ohio, sold various items of kitchenware to the National Furniture & Appliance Stores, Inc., with the billing made to the bankrupt company but delivery to National Discount Stores of Newburgh, Incorporated, of Newburgh, New York.

19. On or about April 5, 1963, U. S. Continental Sales Corporation of New London, Connecticut, sold linoleum rugs for a total of $1,017 to the National Furniture & Appliance Stores, Inc., with the billing made to the bankrupt company buy delivery to National Discount Stores of Newburgh, Incorporated, of Newburgh, New York.

20. On or about March 29, 1963, Wholesale Tire and Battery Company of Hartford, Connecticut, sold 206 tires at a total value of approximately $3,665.28 to the National Furniture & Appliance Stores, Inc., with delivery made to the bankrupt store at Rocky Hill, Connecticut.

21. On or about November, 1962, the exact date being unknown to the Grand Jurors, IRWIN GORDON purchased a Pontiac Grand Prix which was registered in the name of Mrs. Joseph Scata from Jones Downtown Motors of Hartford, Connecticut, by making a down payment by check on the National Furniture & Appliance Stores, Inc., in the amount of approximately $500, the exact amount being unknown to the Grand Jurors.

22. On or about March 12, 1963, Joseph J. Scata issued a check drawn on the National Furniture & Appliance Stores, Inc., in the amount of $346.20 to Universal C. I. T. as partial payment of a Ford Thunderbird sold by Jones Downtown Motors of Hartford, Connecticut, to Theresa Scata, the wife of Joseph J. Scata.

A TRUE BILL.

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FORMAN

/S/ ROBERT C. ZAMPANO
UNITED STATES ATTORNEY

/S/ JOHN D. ADAMS
UNITED STATES ATTORNEY